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COMMITTEE ON THE RIGHTS OF THE CHILD

Eleventh session

SUMMARY RECORD OF THE 277th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 19 January 1996, at 10 a.m.

Chairperson: Mrs. BELEMBAOGO

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REPUBLIC OF KOREA (continued)

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Republic of Korea (continued) (CRC/C/8/Add.21 and CRC/C.11/WP.4)

1. At the invitation of the Chairperson, Mr. Seung Ho, Ms. Myung Sook Kim, Mr. Joon-Hee Lee, Mr. Yong Dal Kim, Mr. Chang Ho An, Mr. Sangheon Um, Mr. Kang Hyeon Yun, Ms. Hyun Joo Oh, Mr. Min O Jung and Mr. Keywon Cheong (Republic of Korea) took places at the Committee table.

2. The CHAIRPERSON invited the Korean delegation to reply to the questions put by the members of the Committee.

3. Mr. Seung HO (Republic of Korea), referring to the age of marriage, said that most aspects of marriage in Korean society were governed by long-standing traditions. Grooms were usually two or three years older than brides, but wider age gaps were not excluded. The legislation on the minimum age of marriage reflected tradition as well as biological considerations. Traditionally, marriage required the consent of the parents of both parties, although that was not a legal requirement if the bride and groom were of the age of majority. Of course, since the Second World War changes had been taking place in the traditional attitudes to such matters and the Government was trying to harmonize tradition with the requirements of change.

4. Children could indeed seek counselling without their parents' consent by visiting a counselling or social welfare centre. The secrecy of such counselling was guaranteed by law. There were 79 child welfare consultation centres and 297 social welfare centres to which children had free access. They could also talk to one of the 3,000 social workers employed at the basic township level.

5. With regard to the educational opportunities of disabled children, he could inform the Committee that, 90.8 per cent of all disabled children were attending school as of January 1996. The Government thought that it would be possible to raise the figure to 100 per cent.

6. As to testimony given by children in court, a child could refuse to testify if he thought that a family member or a guardian might suffer as a result. The law prohibited compulsory testimony by children aged under 15.

7. The first principle in cases of sexual abuse was that a child could not bring his parents before a court, although he could do so in the case of a guardian. However, children had access to hot lines and social workers in the event of sexual abuse by their parents or other persons. The social worker could then initiate legal proceedings or seek legal assistance for the child.

8. Cases of the expulsion of children from school were very rare in Korea. In 1995, the graduation rates from the various levels of primary and secondary education had been 94 per cent or higher. The regulations governing suspension were very strict. Any such move was preceded by consultation between the child's teachers, the school counsellors and his parents, with the child present. The case would then be considered by the school disciplinary

committee, where the child had the right to state his views. The head teacher would then take the decision. If the child was expelled, the usual practice was to transfer him to another school. If the child was found to be quite unsuitable for education in the regular school system, he could be advised to attend a vocational school or continue his education by some other means.

9. On the parental preference for sons over daughters, he could confirm that the law prohibited foetal testing. All medical institutions must display clear announcements to that effect. It was true that some parents preferred sons to daughters, but the authorities regarded such attitudes as wrong and they enforced the law strictly. They were also trying to change such attitudes by means of information campaigns.

10. The first point to be made about conflicts between children and their adoptive parents was that the law made no distinction between adopted and natural children. If a child was treated badly, his adoptive parents were liable to sanctions. If the ill-treatment continued, the child could be entrusted to the care of the social services, which might take action to dissolve the adoption and find more suitable parents. If that was not possible, the child could be cared for in an institution until the age of 18. The views of any natural children were taken into account when their parents were considering adoption: the whole issue would be discussed in a meeting of the extended family, including the children.

11. On the question of children of mixed blood, the latest statistics showed that none of the approximately 2,000 children adopted abroad each year was of mixed blood. The problem had almost disappeared in the 45 years or so since the Korean war. In the past, mixed marriages had been almost unknown in Korean society, but times were changing and such marriages would no doubt become more common in the future. There was no legal obstacle to marriage to a person of another race or nationality.

12. With regard to the trial of civilians by military courts, he could confirm that there had been only 31 such cases over the past 5 years. Obviously, the practice had a negligible effect on civilian life.

13. The rights and needs of children were indeed taken into account in the formulation of the State budget. The law required that the Ministry of Health and Social Affairs and the Ministry of Culture and Sports must discuss the content of the proposed budget with the financial ministries before it was submitted to the National Assembly. In the 1996 budget, 22 per cent of the resources were allocated to national defence, 8.6 per cent to social development and 19 per cent to education.

14. Training programmes for members of the child welfare committees were organized annually on a provincial basis and included seminars, practical training and information about the Government's efforts to promote the welfare of children.

15. On the question of the monitoring of the application of the child welfare legislation, he had said at the preceding meeting that Korea did not have an independent body dealing with that matter. But the central and provincial authorities were open to any suggestions or complaints from the public

concerning the promotion of children's welfare and protection of their rights. All such suggestions or complaints were carefully recorded and a deadline was set for dealing with them.

16. Mrs. SANTOS PAIS said that promoting and protecting the rights of children in the Republic of Korea was a matter of adequate legislation, accompanied by measures to increase awareness and change attitudes. For example, in conformity with the Convention, national legislation should ensure that the minimum age of marriage for women and men was the same. There was also a need for campaigns to raise the level of awareness and gradually change the traditional mentality in that regard. The same could be said for disabled children and children born out of wedlock. Those special groups required the protection of the law, as well as measures to lessen any stigma attached to their status.

17. According to article 12 of the Convention, States parties must ensure the right of children to express their views freely and, in that connection, she was not sure whether the system of school disciplinary committees, with a single child representing the rest of the students, was adequate. Perhaps the Korean Government should consider other approaches, such as children's committees. In cases where a child had been separated from his parents as a result of abuse or neglect, it was important to ascertain the feelings and wishes of the child.

18. In general, there was an imbalance in the Korean national budget, which was weighted more heavily on the side of defence than on that of social welfare.

19. Pursuant to article 3 of the Convention, the best interests of the child should be borne in mind in all actions concerning the child and, in particular, with regard to the child's right to be heard in judicial proceedings.

20. Mrs. KARP recalled that the Korean Government's reservation to article 40, paragraph 2 (b) (v), of the Convention had been made on the grounds that, in the event of martial law, a single military trial was permitted. The number of civilians actually tried by military courts was, according to the report, very small. Presumably, the number of children in that situation would be even smaller. What then was the purpose of maintaining the reservation?

21. The lack of adequate social services for children was a matter of concern. Given the number of children in the Republic of Korea, social workers in that field must be burdened with extremely heavy case-loads. Were the laws in that area actually being implemented in full?

22. Mr. HAMMARBERG asked whether the Republic of Korea had any specific mechanism to ensure that children would receive an adequate share of the resources provided for in the national budget.

23. States parties could always take the minimalist approach to the Convention by seeing to it that they met the minimum standards it set. However, the Committee hoped that Governments would go further and use the

Convention as a source of inspiration for their initiatives in the area of children's rights. The Republic of Korea had the legislative framework to prevent discrimination against particular groups, including disabled children and children belonging to minorities. Yet, was the Government doing enough to prevent and eliminate discriminatory attitudes and practices with regard to children; how did it promote a system of values that was compatible with the spirit of the Convention? He had the impression that the Government was not taking a genuinely progressive stance in terms of education, launching awareness campaigns and encouraging political discussion on how the Convention could be used as an instrument of change.

24. Mrs. BADRAN said that, in view of the emphasis on education in the Republic of Korea, it was likely that the average age at which girls married was much higher than the minimum age allowed by law. If so, perhaps the law could be amended to reflect the social reality.

25. Mr. Seung HO (Korea) said that his Government had taken note of the Committee's suggestions and would bear them in mind when planning future action in the field of children's rights.

26. It was true that the minimum legal age of marriage for girls no longer reflected the reality in his country: most young women married in their twenties.

27. His Government did not rule out the possibility of reviewing the Civil and Penal Codes in terms of how well they reflected the new attitudes and practices which had emerged in the past several decades.

28. The CHAIRPERSON invited the delegation of the Republic of Korea to provide information on the questions the Committee had asked in connection with the section of the list of issues (CRC/C.11/WP.4) entitled "Civil rights and freedoms", which read:

"Civil rights and freedoms
(Arts. 7, 8, 13-17 and 37 (a) of the Convention)

15. With respect to the information contained in paragraph 50 of the report, please indicate whether the Government has any plans to review its legislation relating to nationality, in light of the provisions of articles 2, 3 and 7 of the Convention, particularly with a view to preventing statelessness.

16. In the light of paragraph 63 of the report, please provide information on any mechanisms in place to ensure that a child in school may receive instruction in his/her own religion. In addition, please indicate whether the Government has any plans to provide for alternative subjects for students in school who choose not to have religious instruction."

29. Mr. KOLOSOV said that, according to paragraph 50 of the report, a child born of a Korean mother and a foreign father might be deprived of a

nationality under certain circumstances. That would appear to violate article 7 of the Convention, under which States parties were bound to protect children from statelessness.

30. The report stated that children's freedom of expression was protected under the Korean Constitution because it granted all citizens freedom of speech. However, many societies did not regard children as full citizens and, consequently, the provisions of their constitutions might not always be applicable to children. There was a need for express provisions to reflect children's rights and freedoms.

31. According to the Korean Civil Code, parents were free to provide a religious and moral education for their children. That did not correspond fully to article 14 of the Convention, under which parents were entitled to provide direction to the child in the exercise of his or her right to freedom of thought, conscience and religion. It was important that the child's views should be taken into account in that regard. Considering that Korean students were required to attend the school nearest to their home, moreover, he wondered whether such an arrangement limited children in their choice of religious education.

32. Children in Korea appeared to have limited access to information. How did the media help them learn about other civilizations? What was the extent of their participatory rights within the educational system? Children's freedom of expression was also limited by the Korean national security law, which should be reviewed by the Government.

33. With regard to the protection of children, she asked whether police officers were trained to avoid ill-treatment of young people being held in detention centres. Were teachers trained to respect the provisions of article 28 of the Convention on measures to ensure that school discipline was administered in a manner consistent with the child's human dignity? Was there any contradiction between the teacher's right to inspect a student's personal belongings and the right to privacy as provided under article 16 of the Convention?

34. Miss MASON asked whether, in view of the great emphasis placed on academic achievement, Korean students engaged in extra-curricular activities. Did students participate in peer counselling groups in which children taught one another about their rights?

35. According to the Korean national security law, any individual threatening State security was subject to imprisonment. How did such regulations apply to children, particularly in view of the child's right to freedom of association?

36. According to the report, the manufacture of pornographic material was prohibited under the Penal Code. What other laws protected children from material which might be injurious to them? What was the role of the performance ethics committee?

37. Mr. Seung HO (Korea) said that the nationality of the father determined the nationality of the child. For example, a child of a Korean mother and a

foreign father would have the nationality of its father. If, for any reason, that proved impossible, the mother's nationality could be invoked. The overall goal was to avoid leaving any child stateless.

The meeting was suspended at 11.25 a.m. and resumed at 11.40 a.m.

38. Mr. Seung HO (Republic of Korea) said that no Korean legislation dealt exclusively with the rights and freedoms of children. Under the Korean Constitution, all citizens were considered equal and children were citizens like any others. Legally speaking, children must therefore be treated in the same way as adults; in practice, that treatment depended on the maturity of the child. To his recollection, no young children had been tried under the Military Court Law. It might rightly be asked why Korea maintained that law, particularly as it had been criticized by the international community. In 1945, Korea had broken into a communist regime in the North and a democratic regime in the South. Although a cease-fire had been declared in 1953, no peace agreement had ever been signed, and that meant that the two parts of Korea were still officially at war. It was therefore impossible to abolish the Military Court Law. The Korean Government agreed that it would be best if no such legislation existed, but, if it had not existed, it could be asked how many children's rights and freedoms would have been violated.

39. In principle, Korea tried to protect the privacy of schoolchildren. In fact, however, teachers sometimes violated the privacy of their pupils; that practice should perhaps be limited in so far as possible. Although every Korean school set its own disciplinary and administrative rules, the Korean Government periodically reviewed those rules for their compliance with certain standards, including those relating to the rights of the child.

40. The Republic of Korea, which occupied the southern part of the Korean peninsula and covered an area of 9,000 square miles, had a population of 44 million. Although the country had sufficient facilities for the provision of education to all Korean children, the individual preferences of each child could not always be taken into account. There might simply not be enough schools in a given area; a child from the rural provinces could not expect to enrol, for instance, in one of the Seoul city schools. But those limitations were purely physical and should not suggest any intention on the part of the Korean Government to restrict a child's freedom of choice.

41. The ill-treatment of children in detention was prohibited under Korean law and the Government was endeavouring to incorporate more progressive concepts into the relevant legislation.

42. Korean legislation did not discriminate against children of mixed American-Asian descent. In fact, no serious complaints of discrimination against such children had come to the attention of the Government. No modern society could close its borders and cultures and races inevitably mingled. However, the phenomenon of mixed parentage was relatively new in Korea and the Korean Government should take measures to foster an atmosphere of tolerance and acceptance, so that discrimination of that kind could not occur.

43. In Korea, there were three daily newspapers exclusively for children and every television station showed special children's shows. Programmes dealing

with children's affairs were very popular and young children often appeared on them, accompanied by members of their family. Korean law regulated the portrayal of pornography and violence by the media, particularly in programmes for children. Controversy had in fact arisen in Korean society about whether the application of those provisions to foreign films constituted censorship. The provisions of the legislation on child protection, the registration of periodicals, and radio, television, film, video, musical recordings and theatre were designed to prevent the exposure of children to influences considered injurious to their moral health.

44. Mr. KOLOSOV inquired what measures the Korean Government had taken to ensure that children were familiar with other cultures and what provisions of Korean legislation allowed a child freely to choose his own religion.

45. Mrs. BADRAN said that invoking the principle of jus sanquinis to justify the denial of nationality to a child whose mother was Korean, but whose father was a foreign national defied logic because it was the mother who nourished the baby with her blood during the nine months of its gestation. Furthermore, the constitutions of all countries declared their citizens equal, so that the denial of nationality to the child of a mother who was a citizen was a violation of constitutional law.

46. What measures had Korea taken to enable children to exercise their right to freedom of association and expression? Were there children's associations through which young people could acquire the skills to participate in a democratic society? It would also be useful to know whether Korean schoolchildren were permitted to organize peaceful demonstrations and whether they exercised that right.

47. Mrs. KARP asked how often charges were brought against members of the media for violating the prohibition against revealing the name and identity of a child implicated in a criminal prosecution.

48. The abolition of security legislation was understandably a complex matter. Korea might therefore consider adapting that legislation to bring it into line with the provisions of the Convention.

49. Mrs. SANTOS PAIS said the Convention should be seen as prohibiting discrimination on the basis not only of the sex of the child, but also of the sex and status of the parents. The written replies offered a curious solution to the problem of nationality for children born to Korean mothers and foreign fathers: that a mother should register her child without mentioning its foreign father, since children with unknown fathers received Korean nationality. In her view, that approach was contrary to the right of a child to a family life and invited stigmatization of both child and mother.

50. Within the meaning of the Convention, children should be seen not merely as vulnerable beings in need of protection, but as autonomous persons capable of expressing their own views and actively participating in society. And children could not be expected to mature into full members of society if they lacked the experience of participation in school and community life. The constitutions of many countries guaranteed the fundamental rights of their citizens, but that alone was not enough. The Committee had to understand how

those rights were implemented and, in particular, what measures were taken to ensure respect for the evolving capacities of children. Were Korean children permitted to form associations? At what age? Were Korean schoolchildren allowed to formulate suggestions on and objections in respect of matters that concerned them? Those questions assumed particular importance in a country like Korea which was undergoing a transition to democracy.

51. The existence of the Military Court Law continued to be a matter of concern. The Human Rights Committee had determined that Korea's civil and criminal court systems could adequately handle the kinds of problems that arose in that country. Similarly, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression had urged the Republic of Korea to repeal that Law. Agreement seemed to be taking shape that Korea's security measures went beyond what was needed. According to the International Covenant on Civil and Political Rights, moreover, any restrictions on the rights to freedom of opinion and expression should be commensurate with a real threat. The Korean Government should give careful consideration to its position on the expression of dissenting views: public scrutiny of government policy was essential to the workings of a democracy.

52. Mr. Seung HO (Republic of Korea) said that the curricula of all Korean schools included courses on foreign civilizations and religions and Korean television programmes on life in foreign countries were more popular than those which described national customs and culture. Children enjoyed the right to choose their religion, as did all Korean citizens. The Republic of Korea had no State religion, all religions being considered equal under the law.

53. Nationality was determined either by jus solis or by jus sanguinis. The Republic of Korea had always followed the latter. The denial of nationality to the child of a Korean mother and a foreign father had simply never constituted a problem in Korean society. He had nevertheless listened with great interest to the arguments put forward by the members of the Committee. The Korean Government might give some thought to revising its legislation in order to solve that essentially theoretical problem.

54. Concerning education, the Convention was a regular feature of school curricula in the Republic of Korea. Children learned about family, community and public life. The most important principle in maintaining family ties in his country, filial piety, was also part of school curricula.

55. Replying to a question by Mrs. Badran, he said that the Republic of Korea had suffered greatly from violent political demonstrations, which had unfortunately become fashionable. The right to demonstrate peacefully was anchored in the Constitution and in national law, as long as it did not disturb public order or endanger public security.

56. Mr. Chang Ho AN (Republic of Korea), taking up the question whether the names of children involved in court proceedings were kept confidential, assured the Committee that the privacy of children was protected. It was for the judge to decide, case by case, whether the names of children should be withheld.

57. Mr. Seung HO (Republic of Korea) said that he understood the Committee's concern with regard to the complex issue of the Military Court Law. Any repeal of legislation must, however, be approved by the Government, with the backing of the Korean people, and it was therefore difficult to amend that Law.

58. His country was going through a period of transition and was working to improve protection for the rights of children. Although, in some cases, Korean schools differed from those of other countries in the way they treated certain problems, his Government was doing its best to ensure conformity with international standards.

59. The CHAIRPERSON invited the members of the Committee to ask questions on the section of the list of issues entitled "Family environment and alternative care", which read:

"Family environment and alternative care
(Arts. 5, 18 paras. 1 and 2, 9, 10, 27 para. 4
20, 21, 11, 19 and 39 and 25 of the Convention)

17. In the light of the information contained in paragraphs 11, 12 and 82 of the report, please provide information on any measures being taken or planned to ensure the child's right to visit and maintain a relationship with both parents in the case of their separation or divorce.

18. Please provide further information on the measures taken to ensure that adoption procedures allow sufficient opportunity for parents and other persons concerned, including the child, to weigh up the consequences of and alternatives to adoption and to give their informed consent to the adoption on the basis of the necessary counselling.

19. Please provide further information as to how the rights of the child are safeguarded in the proceedings of adoption and how the best interests of the child is the paramount consideration, including with regard to the rights of the child to know his or her parents and to preserve family relations.

20. Please provide information on the programmes developed to prevent and reduce the abandonment of children.

21. In view of the information contained in the report (paras. 89 and 90), what measures are being taken to develop alternatives to institutional care of children?

22. In light of the information contained in paragraphs 98-104 of the report, please indicate the steps envisaged to undertake further legal and other measures, including the development of awareness campaigns, to prevent and combat child abuse, including within the family.

23. What mechanisms exist to allow children within the family and in child-care institutions, including residential care facilities, to lodge complaints of abuse or neglect?"

60. Mrs. EUFEMIO welcomed the decision by the Republic of Korea to withdraw its reservation to article 9, paragraph 3, of the Convention.

61. Referring to cases in which parents had separated, she asked how the right of the child was guaranteed to visit the parent that did not have custody. What was done to ensure that the child was not caught up in the conflict between separated parents? Was it possible for a child to talk to a social worker when faced with the problem of conflicting loyalty? Was any effort being made to deal with that situation?

62. Noting that divorce was on the rise, she asked whether there was any community support to prepare couples for married life. Was the Child Welfare Committee involved in such activities? Might it be possible for the Government to introduce a structured system for strengthening family life or was that left to NGOs?

63. In the written replies, it had been stated that an adopted child had the right to know the identity of his or her parents and to preserve family relations. Did that simply entail knowledge of the identity of the biological parents or was actual contact preserved? In her view, it was important not to place the commitment of the adoptive family at risk. More generally, how long did children have to wait for placement in adoption? What was the ratio of applicants to children? What factors had led to the decline in intercountry adoption, to which reference had been made in paragraph 92 of the report? Had the Republic of Korea ratified the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption?

64. Turning to family violence, she asked whether any measures were available to help the abused child to recover or to counsel abusive parents. Since there appeared to be a correlation between media and political violence and violence in the home, she wondered whether any action was planned by the Government to combat that development. Might it be possible to establish a regular reporting mechanism on child abuse and provide therapeutic foster care for abused children? Doctors, social workers and other professionals sometimes hesitated to report incidents of child abuse because they felt bound by requirements of confidentiality. It might be necessary to review codes of ethics to allow such professionals to reveal confidential information without being held accountable. Also, if neighbours suspected that child abuse was taking place, would they intervene or was the child merely regarded as the parents' property?

65. According to the report, unwanted pregnancies constituted one reason for abandonment and she would like to know whether any effort was made to encourage mothers to keep their children or to prevent unwanted children from becoming abused ones? Did the child have the right to be born and not to be aborted?

66. She had read in a report from December 1992 that there were nearly 8,000 "child-headed" families in the Republic of Korea. Did they receive financial support and were there services to ensure that such families were given parental supervision?

67. Mrs. SANTOS PAIS, referring to the question of adoption, said that the written replies of the Republic of Korea had given her the impression that emphasis was placed on trying to find families that wanted a child and that the needs of the child were not given the necessary consideration. She encouraged the Government of the Republic of Korea to seek a new approach in that regard. The phenomenon of "child-headed" families suggested that preventive action might be called for to persuade children not to run away from home. Clearly, "child-headed" families were not in the best interests of children.

68. She was aware that Confucian culture regarded corporal punishment as an educational measure; the Committee, for its part, encouraged dialogue and an exchange of views between parents and children and promotion of the democratic spirit, both in school and the home. Were there any awareness campaigns, professional training programmes or family counselling on the need to abandon the practice of corporal punishment?

69. Mr. HAMMARBERG said that he agreed with Mrs. Santos Pais on the importance of introducing comprehensive legislation to prevent child abuse.

70. Miss MASON asked whether there were any government measures that could be taken when parents reneged on their responsibility to pay maintenance.

71. In view of the commitment by States under article 27 of the Convention to ensure an adequate standard of living for children, she inquired what measures were envisaged to guarantee a minimum wage, provide employment opportunities and thereby prevent families from disintegrating and children from lapsing into anti-social or immoral behaviour.

72. She would like to know how frequent the phenomenon of illicit transfer and non-return of children abroad was, especially in cases of mixed Korean and non-Korean couples, and what legislation had been adopted to combat it.

73. Since the report contained little information on the sexual abuse of children and incest in the family she wished to know the age of sexual consent in the Republic of Korea. What was the Government's policy on sexual abuse, especially in the family? What procedure was followed when cases of sexual abuse or incest came to light? Did they result in the automatic removal of the child from the home?

74. Were teachers trained in detecting signs that their pupils had been sexually abused? Was there a system of mandatory reporting for teachers, doctors and social workers? How were such professionals, as well as police and judges, trained to deal with the problem? Was there any coordination among professionals in the area? Was the legal system adequate to protect children's rights in that regard? Was a child's right to privacy safeguarded in court? Given that it was at a judge's discretion whether to accept the testimony of a child, how was evidence taken?

75. Was incest a crime in the Republic of Korea? Inasmuch as it had been stated that children could not bring proceedings against members of their own family, presumably they would need to turn to other agencies to do so. Were there public awareness campaigns, educational programmes or counselling on the

issue and how were the media involved in such activities? Was sex education part of the school curricula? Had there been any research on the subject and had the findings been drawn on in the formulation of government policy for assisting and treating the victims? Were any other complaint mechanisms open to abused children?

76. She had had the impression that the planned shelter centres for abused children (para. 104 of the report) were only for the physically abused and asked whether any thought had been given to opening such shelters to sexually abused children, too.

77. What measures had been taken, pursuant to article 39 of the Convention, to promote the physical and psychological recovery of victims of sexual abuse and to help their parents?

The meeting rose at 1.05 p.m.